IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	**)**	
	)	
FREDERICK, KARI ANNE,	**)**	**Case No. 99-00035**
	)	
Debtor.	**)**	**MEMORANDUM OF DECISION**
	)	**AND ORDER**
_____	**)**	

HONORABLE TERRY L. MYERS, U.S. BANKRUPTCY JUDGE

Bradley B. Poole, Boise, Idaho, for Debtor Kari Anne Frederick.

John Krommenkoek, Boise, Idaho, Trustee.

Office of the U. S. Trustee, Boise, Idaho.

BACKGROUND

Kari Anne Frederick moves the Court pursuant to 11 U.S.C. § 350(b) and Fed.R.Bankr.P. 5010 to reopen her chapter 7 case which was closed on June 21, 1999. The Debtor wishes to reopen her case to add creditors who were not scheduled or listed prior to the closing of her case.

11 U.S.C. § 350(b) provides that the Court may order a closed case reopened "to administer assets, to accord relief to the debtor, or for other cause." The Debtor apparently believes that reopening, and scheduling omitted creditors, will provide her some tangible relief. Though she does not expressly say so, the Court assumes that she thinks this will ensure that her liability to those creditors is discharged.

DISCUSSION

The precise issue raised here was previously resolved by this Court in *In re Mendiola*, 97.3 I.B.C.R. 77 (Bankr. D. Idaho 1997). The Court there rejected a motion to reopen a closed, no asset chapter 7 case for the purpose of adding omitted creditors. In doing so, the Court explained that § 727(b) discharged all prepetition debts whether or not they were scheduled and that "[s]o far as that section [i.e., § 727(b)] is concerned, a pre-bankruptcy debt is discharged, whether or not it is scheduled." 97.3 I.B.C.R. at 78, citing *In re Beezley*, 994 F.2d 1433, 1435 (9th Cir. 1993). But *Mendiola* also noted that § 523(a)(3) bears on the issue. *Id*. That section provides:

> (a) A discharge under section 727 ... does not discharge an individual debtor from any debt –
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> ...
>
> (3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit –
>
> (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

> (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request[.]

11 U.S.C. § 523(a)(3)(A), (B).[1]

In light of the operation of §§ 727(b) and 523(a)(3), the Court in *Mendiola* held:

> Thus, in a no asset, no [claim] bar date case, if the omitted debt falls within the ambit of 11 U.S.C. § 523(a)(3)(A), it has already been discharged under 11 U.S.C. 727(b). If the omitted debt is of a type specified by 11 U.S.C. § 523(a)(3)(B), it has not been discharged, and is non-dischargeable. *In re Beezley*, 994 F.2d 1433, 1434 (9th Cir. 1993).

97.3 I.B.C.R. at 78.

Beezley established many years ago that reopening and amendment of schedules in such circumstances is a "pointless exercise." *Mendiola*, 97.3 I.B.C.R. at 78, quoting, *Beezley*, 994 F.2d at 1434. The concurring opinion in *Beezley* noted that courts have characterized reopening a no asset chapter 7 to schedule omitted creditors, as "for all practical purposes a useless gesture," "of no legal effect," "futile," "unnecessary" and "unwarranted," "pointless," and "meaningless." 994 F.2d at 1437

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[1] "[T]he convoluted language of section 523(a)(3) can be paraphrased as follows:
(a) A discharge does not cover –
(3) an unscheduled debt if –
(A) with respect to a debt not covered by § 523(c), the failure to schedule deprives the creditor of the opportunity to file a timely claim, or
(B) with respect to an intentional tort debt covered by § 523(c), the failure to schedule deprives the creditor of the opportunity to file a timely claim or a nondischargeability complaint."

Beezley, 994 F.2d at 1436 (O'Scannlain, J. concurring).

(O'Scannlain, J., concurring) (citations omitted). As further stated in the concurring opinion,

> [E]ven if an omitted debt falls under section 523(a)(3)(B), no purpose is served by reopening solely in order to amend the schedules; scheduling, per se, is irrelevant to dischargeability even under this subparagraph once a case is closed. As noted above, section 523(a)(3)(B) provides that, if the debt flows from an intentional tort "of the kind specified" in the relevant paragraphs, the debtor's failure to schedule in time to provide notice to the creditor of the need to seek an adjudication of dischargeability is conclusive (at least in the face of actual knowledge of the bankruptcy on the part of the creditor). The debt is not discharged. "Scheduling makes no difference to outcome. 'Reopening a case does not extend the time to file complaints to determine dischargeability. Either the creditor had actual, timely notice of the [case] or he didn't. Amending the schedules will not change that.'"

994 F.2d at 1437, quoting from *In re Mendiola*, 99 B.R. 864, 868 (Bankr. N.D.Ill. 1989).

This Court's *Mendiola* decision acknowledges and applies *Beezley,* and squarely controls the present motion.[2] The instant case, like *Mendiola,* was a no asset chapter 7. The notice of the filing and § 341(a) meeting of creditors did not, therefore, establish a bar date for filing claims. It did, however, establish an April 13, 1999, bar date for the filing of complaints under § 523(c) or § 727. *See* Fed.R.Bankr.P. 4004(a), 4007(b), (c).

The "several creditors" omitted during the Debtor's case either have discharged debts under § 523(a)(3)(A), or they have nondischarged debts under

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[2] This Court in *In re Ward*, 96.3 I.B.C.R. 128 (Bankr. D.Idaho 1996) also recognized and applied *Beezley*. It, however, addressed a slightly different situation, since there an "asset notice" had been initially issued and a claim bar date set, though the case ultimately closed as a no asset case.

§ 523(a)(3)(B). Scheduling those creditors now will have no effect, regardless of the category into which they fall. Reopening the case can accord no relief to the Debtor on this score, and no other cause has been alleged or shown.[3] Upon the record presented and under the foregoing authorities, the motion under § 350(b) should and will be denied.

The Court has another concern. Not only has the Court been required to address a matter already well settled by its own reported precedent and controlling Ninth Circuit authority, but the Debtor has had to pay a fee to present the motion to reopen and amend. Perhaps she is also under an obligation to pay attorneys' fees incurred in these regards. Neither are costs she should reasonably bear, and the Court's order will provide that she does not.

ORDER

For the reasons stated above, the Debtor's motion is DENIED. However, the Court will order the Clerk to return the reopening fee which was tendered with the motion. Counsel for the Debtor shall ensure that these funds are delivered to the Debtor to the extent that she, rather than counsel, advanced them. Also, counsel shall not charge the Debtor any attorneys' fees in regard to the motion to reopen. Counsel shall submit appropriate written verification to the U.S. Trustee that these conditions have been met.

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[3] The motion here did not address *Mendiola* or the authorities including *Beezley* discussed therein, or indicate how the present request could be well taken in light thereof. *See*, Fed.R.Bankr.P. 9011(b) (an attorney who presents a motion to the court certifies that to the best of his knowledge and belief, formed after an inquiry reasonable under the circumstances, its legal contentions are warranted by existing law.)

Dated this 18th day of November 1999.